

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAID O'CLOVER, INC., Debtor, a
Washington corporation, et al.,

Plaintiffs,

v.

CHEVRON USA INC., d/b/a CHEVRON
PRODUCTS COMPANY, a Pennsylvania
corporation, et al.,

Defendants.

NO. CV-03-3077-EFS

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT CHEVRON U.S.A,
INC.'S MOTION FOR PARTIAL
SUMMARY JUDGMENT
DISMISSAL BASED ON LACK
OF EVIDENCE OF DAMAGES
AND STANDING**

On August 17, 2005, the Court heard oral argument on Defendant Chevron U.S.A., Inc.'s Motion for Partial Summary Judgment Dismissal Based on Lack of Evidence of Damages and Standing ("Damages and Standing Motion"), (Ct. Rec. 195). Mr. Randall P. Beighle appeared on behalf of Defendant Chevron U.S.A., Inc. ("Chevron"), while Plaintiffs Maid O'Clover, Inc. ("MOCC"), Maid O'Clover, South, Inc. ("MOCS"), and Maid O'Clover, East, Inc. ("MOCE"), collectively referred to as "MOC," were represented by Mr. James Perkins. After reviewing the submitted material, taking oral argument, and considering relevant authority, the

1 Court is fully informed and hereby **grants in part** and **denies in part**
2 Chevron's Damages and Standing Motion, (Ct. Rec. 195).¹

3 **II. Analysis**

4 **A. Discrimination Claim under FIPA and GDBRA**

5 Generally, it is a violation of the Franchise Investment Protection
6 Act ("FIPA") and Gasoline Dealer Bill of Rights Act ("GDBRA") for any
7 entity to "[d]iscriminate between franchises in charges offered or made
8 for royalties, goods, services, equipment, rentals, advertising services,
9 or in any other business dealing. . . ." R.C.W. §§ 19.100.180(2)(c) &
10 19.120.080(2)(b). Both FIPA and GDBRA authorize private actions for
11 damages, but expressly limit plaintiffs' recoveries to "actual damages."
12 *Id.* §§ 19.100.190(3) & 19.120.090(2); *Morris v. Int'l Yogurt Co.*, 107
13 Wash. 2d 314, 319 (1986) ("[T]he franchisee must show that the violation
14 actually caused him to suffer damages, not merely that a violation
15 occurred.")

16 Chevron urges the Court to dismiss MOC's FIPA and GDBRA price
17 discrimination claims relating to wholesale prices offered to Tri-Cities
18 dealers and MOC, who mainly operated in Yakima, Wenatchee, and Spokane.
19 For the purposes of this motion, without admitting such facts, Chevron
20

21 ¹The factual background of this case and standard of review for
22 motions for summary judgment can be found in the Court's September 16,
23 2005, Order Denying Plaintiffs' Motion for Partial Summary Judgment and
24 Granting in Part and Denying in Part Defendant Chevron U.S.A., Inc.'s
25 Motion for Partial Summary Judgment Under the Washington Franchise
26 Investor Protection Act, (Ct. Rec. 341).

1 assumes for the purposes of this motion tha MOC is unable prove its
2 claims of discrimination. However, Chevron argues these claims should
3 nonetheless be dismissed because MOC is unable to prove it suffered any
4 actual damage as a result of the discrimination. In the alternative,
5 even if MOC can prove damage, Chevron does not believe MOC can present
6 sufficient evidence to allow a jury to determine a damage award.

7 MOC claims Chevron's alleged discriminatory pricing practices harmed
8 MOC by causing the Chevron dealers in the Tri-Cities market to "siphon
9 off" customers from MOC in the Yakima market. This claim is consistent
10 with deposition testimony given by Mr. Jeffery Loudon, former co-owner
11 of MOC, in which he asserted his stores competed with the Tri-Cities
12 market and that people commuting from Yakima to Hanford were buying
13 gasoline in the Tri-Cities market because it was cheaper. (Ct. Rec. 199
14 at Ex. C.) MOC then goes on to explain a potential methodology the jury
15 could use to determine the amount in damages MOC suffered as a result of
16 the alleged discrimination, which is based on profit history and
17 projected revenues.

18 Parties opposing summary judgment may not exclusively rely on mere
19 assertions of fact to avoid an unfavorable ruling. *Anderson*, 477 U.S. at
20 248. Parties opposing summary judgment must come forward with admissible
21 evidence capable of demonstrating a material fact is genuinely in dispute
22 between the parties or that the moving party is not entitled to judgment
23 as a matter of law. *Id.* In this instance, MOC asserts it lost business
24 to Chevron retailers in the Tri-Cities market due to lower prices offered
25 there, but does not support this assertion with any evidence. Mr.
26 Loudon's claim of losing business to the Tri-Cities appears to be based

1 on his own logical deduction, but is in no way supported by corroborating
2 evidence. Although Mr. Loudon's conclusion may be correct, MOC has
3 failed to meet its burden of providing actual evidence of how it was
4 harmed by inequities in pricing between Chevron's Yakima and Tri-Cities
5 markets. To avoid summary judgment on this issue, MOC could have
6 presented evidence of how Mr. Loudon came to this conclusion, but its
7 failure to corroborate Mr. Loudon's assertion or present any other
8 evidence of discrimination-related damages requires the Court to grant
9 summary judgment on the issue of discrimination under FIPA and GDBRA with
10 regard to MOC's claims of improper pricing in the Tri-Cities market.

11 **B. Damages Related to Registration Violations, Untrue Statements, and**
12 **Material Omissions**

13 Under FIPA, franchisors must register franchise offers with
14 Washington State authorities and disclose all material information to
15 prospective franchises. R.C.W. §§ 19.100.020, .040, .070.² Further, the
16 act provides that any

18 ²Although GDBRA does not include a registration requirement, it does
19 include a disclosure requirement similar to that found in FIPA. GDBRA
20 prohibits any person in connection with the offer, sale, or purchase of
21 any motor fuel franchise "[t]o sell a motor fuel franchise in this state
22 by means of any written or oral communication which includes an untrue
23 statement of material fact or omits to state a material fact necessary
24 in order to make [other statements] not misleading." R.C.W. §
25 19.120.070(1).
26

1 person who sells or offers to sell a franchise in violation of
2 this chapter shall be liable to the franchisee or subfranchisor
3 who may sue at law or in equity for damages caused thereby for
4 rescission or other relief as the court may deem appropriate.

5 *Id.* § 19.100.190(2).³ As is the case with claims of discrimination under
6 FIPA and GDBRA, a plaintiff asserting violations with regard to
7 registration or disclosure misconduct "must show that the violation
8 actually caused him to suffer damages, not merely that a violation
9 occurred." *Morris*, 107 Wash. 2d at 319.

10 Chevron moves the Court for summary judgment on MOC's claims of FIPA
11 registration violations and untrue statements/material omissions
12 regarding the sale of a franchise under FIPA and GDBRA. Chevron contends
13 MOC is unable to establish it suffered any damages as a result of these
14 alleged violations, and as such, cannot maintain these claims against
15 Chevron.

16 MOC does not dispute Chevron's motion with regards to registration
17 violations, but does claim it suffered damages as a result of alleged
18 untrue statements and material omissions regarding Chevron's purported
19 offer of a franchise under FIPA and GDBRA. In support of its position,
20 MOC points to a plethora of financial projections, statistics, and other
21 evidence it plans to introduce to demonstrate how its decision to enter
22 the 1995 Jobber Agreement harmed the three MOC entities by making them
23 less profitable. In simple terms, MOC alleges it would not have entered
24 into the 1995 Jobber Agreement with Chevron had it been apprised of
25 numerous facts it claims should have been disclosed under FIPA and GDBRA.

26 ³The GDBRA includes a nearly identical damages provision. See R.C.W.
§ 19.120.090(1).

1 Had MOC not entered the 1995 Jobber Agreement, it believes it would not
2 have suffered financial harms it ultimately experienced.

3 The evidence proffered by MOC regarding financial injury as a result
4 of the jobber relationship demonstrates that an issue of material fact
5 is genuinely disputed with regard to these claims. For this reason,
6 summary judgment concerning MOC's FIPA and GDBRA claims for untrue
7 statements and material omissions is denied. However, finding no dispute
8 between the parties concerning FIPA registration violations, the Court
9 grants Chevron summary judgment on that issue.

10 **C. MOCC and MOCE: Standing to Bring Breach of Contract Claims**

11 As Chevron has done in other motions with regard to different
12 claims, it now asks the Court to dismiss any common law breach of
13 contract claims MOCC and MOCE may have alleged in MOC's Complaint.
14 Chevron relies on the fact the 1995 Jobber Agreement was signed by MOCS
15 and not MOCC or MOCE. MOC opposes Chevron's claim, but limits its
16 response to simply stating "all companies have standing to assert FIPA,
17 GDBRA and misrepresentation causes of action against Chevron." (Ct. Rec.
18 243 at 13-15.) MOC apparently concedes its "Breach of Contract -
19 Violation of Duties of Good Faith and Fair Dealing" claims only apply to
20 MOCS as Chevron suggests. Because MOC has failed to present any
21 argument, let alone evidence, to rebut Chevron's claim, the Court grants
22 summary judgment on this issue to Chevron, holding MOCC and MOCE do not
23 have standing to bring the breach of contract claims asserted in its
24 Complaint.

25 Accordingly, **IT IS HEREBY ORDERED:** Defendant Chevron U.S.A., Inc.'s
26 Motion for Partial Summary Judgment Dismissal Based on Lack of Evidence

1 of Damages and Standing, (**Ct. Rec. 195**), is **GRANTED IN PART** (Tri-Cities
2 pricing-related discrimination claim, FIPA registration violations, and
3 MOCC and MOCE's standing to bring breach of contract claims) and **DENIED**
4 **IN PART** (FIPA and GDBRA claims regarding false statements and material
5 omissions).

6 **IT IS SO ORDERED.** The District Court Executive is directed to enter
7 this Order and provide a copy to counsel.

8 **DATED** this 21st day of September, 2005.

9
10 S/ Edward F. Shea

11 EDWARD F. SHEA
12 United States District Judge

13 Q:\Civil\2003\3077.msg.damages.standing.wpd
14
15
16
17
18
19
20
21
22
23
24
25
26